IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7549 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.L.PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7549 of 2004

MR RAMKRISHNA B DAVE for Petitioner No. 1

MR. GORI, AGP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 15/12/2004

ORAL JUDGEMENT

D.L. Pandya, petitioner, has filed this petition

with a prayer to issue a writ of mandamus or any other appropriate writ, order or direction directing respondent No. 1 State of Gujarat through the Secretary, Home Department (Transport) and respondent No. 2, Special Officer of Inquiries, Gandhinagar to quash and set aside the chargesheet or in the alternative, grant permission to appoint Shri R.B. Dave, a retired Motor Vehicle Prosecutor and at present a practising advocate to defend the petitioner in the inquiry. The present petition was filed on 1.7.2004. This Court (Coram: Ms. R.M. Doshit, J) on 23.7.2004 issued notice returnable on 3.9.2004. I have heard Mr. R.B. Dave, learned advocate for the petitioner and Mr. Gori, learned AGP, on behalf of the Government. Looking to the issue involved in the matter, rule is issued. Mr. Gori, learned AGP, waives service of rule on behalf of the Government. With the consent of the parties, the matter is heard finally.

2. The facts giving rise to this petition are as under:

2.1 The petitioner who was serving in Motor Vehicle Department had additional charge of RTO, Ahmedabad and he was attending the RTO, Ahmedabad office for four days and RTO, Vadodara office for two days during a week. The petitioner retired on 31.3.2004 as RTO, Vadodara and after six hours in the midnight at about 12.05 a charge sheet was served on the petitioner.

2.2 The charge against the petitioner is in relation to the registration of five vehicles, the inspection of which was done by a Motor Vehicle Inspector Shri J.M. Panchal, during the period when the petitioner was attending his duties at RTO, Ahmedabad. The Inspector of Motor Vehicles Shri Panchal submitted in his Inspection Report in Form No. 20, while the petitioner attended his duties in RTO, Vadodara. The petitioner normally required to reinspect the vehicles, could not do so, because of the additional duty at RTO, Ahmedabad. The petitioner has verified the Inspection Report together with the required documents for registration and found it in order and passed an order of registration and tax of the vehicles.

2.3 From the record it appears that it was brought to the notice of respondent No. 1 that the said vehicles inspected by the Motor Vehicle Inspector bearing Registration No. GJ 6 X (1) 9061 (2) 9062 (3) 9067 (4) 9068 and (5) 9070 were used as Sleeper Coaches and not as Omni Buses with sitting arrangements and therefore have issued a memo to the Motor Vehicle Inspector for

verification and report. A copy of the said memo was sent to the Transport Commissioner, Gujarat State, Ahmedabad. The Inspector of Motor Vehicles Shri Panchal was suspended by the Transport Commissioner, Ahmedabad and a departmental inquiry is being conducted against him for not carrying out proper inspection of the said vehicles.

2.4 In view of this, a charge sheet dated 31.3.2003 was issued to the petitioner regarding dereliction of duties regarding the vehicles in question which have been referred to earlier. He has not inspected the chassis of the bus, headroom and wheel base and/or not examined sitting arrangement line diagram. It was also stated that though the insurance policy of the vehicles was not there, he has registered the vehicles. He was therefore charged with dereliction of duties under the Gujarat Civil Services (Conduct) Rules, 1971 particularly Rule 3(1)(2) of the said Rules. It was also stated that therefore in view of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 particularly Rule 6, why major penalty should not be imposed upon the petitioner. It was also stated that even though the petitioner retired from service on 31.3.2003, as per Rule 24 of Gujarat Civil Services (Pension) Rules, 2002 the departmental inquiry will still continue. The authority has set out the irregularities committed by the petitioner. Along with the charge-sheet, the charges continued from pages 1 to 153.

2.5 The petitioner filed reply to the said show cause notice on 21.4.2003. In the said reply, the petitioner also stated that if the departmental inquiry is to be continued then he desired to obtain assistance of retired Motor Vehicle Prosecutor, Shri R.B. Dave and at present a practising advocate, to defend the case on petitioner's behalf.

2.6 In the said reply, it was further stated that the petitioner was not responsible for the allegations made against him because the Motor Vehicle Inspector had inspected the vehicle while the petitioner was not in the headquarter at Vadodara and the petitioner has verified the Inspection Report together with application form and the documents and found it correct, and therefore, has passed order of registration and tax.

2.7 It was further stated that respondent No. 1 subsequently ordered an inquiry to be conducted by a Special Officer of Departmental Inquiries by order dated 16.3.2004. The inquiry to be conducted by one Shri C.R.

Bishwas, a retired IAS Officer. Respondent No. 1 has also appointed Mr. U.M. Munshi, Motor Vehicles Prosecutor, as presenting officer to present the case of the Government before the Inquiry Officer.

2.8 Respondent No. 2 has fixed date of preliminary hearing on 1.4.2004 and on the said date the petitioner requested to engage Shri R.B. Dave, a retired Motor Vehicle Prosecutor and at present a practising advocate, to defend the case on his behalf by an application dated 13.4.2004. A copy of the said application has been produced at Annexure-D to this petition. The petitioner had pointed out that in the case of C.L. SUBRAMANIAM VS. COLLECTOR OF CUSTOMS reported in 1972(3) SCC 542 = AIR 1972 SC 2178 wherein it was held that wherein the employee requested to engage a legal practitioner because the employer was represented by a trained prosecutor, the disciplinary authority should allow the practising advocate to defend the petitioner.

2.9 It was further submitted that respondent No. 2 forwarded the said application to respondent No. 1 for necessary action and order. Respondent No. 2 further stated in his letter dated 16.4.2004 that the State Government in General Administration Department has issued guidelines in the year 1993 wherein it has been stated that the practising lawyer should be allowed to defend the delinquent, if the case is complicated and if Presenting Officer is the lawyer or the law officer, then the practising lawyer should be allowed to defend the delinquent. A copy of the said letter dated 16.4.2004 is annexed to the petition. In view of the aforesaid communication dated 16.4.2004, the petitioner also requested respondent No. 1 to allow the delinquent/petitioner to be defended by Shri R.B. Dave. Respondent No. 2 has informed the petitioner vide letter dated 29.5.2004 that respondent No. 1 has not accepted the request of the petitioner and therefore fixed the date of hearing on 15.6.2004.

3. Being aggrieved and dissatisfied with the aforesaid action of the respondents, the petitioner has filed the present petition before this Court.

4. As the subject matter of the petition pertains to important question of administrative law and rules of natural justice and in view of the fact the departmental inquiry proceedings are pending, the matter was heard at admission stage finally with the consent of the learned counsel for the parties.

5. Mr. R.B. Dave, learned counsel for the petitioner has argued the matter on merits. However, at present I am dealing only the question that whether the petitioner has a right to be represented by a retired Motor Vehicle Prosecutor who is a practising lawyer or not. Therefore, I am not dealing with the merit of the matter. Therefore, when the Inquiry Officer conducts the matter, the same may be conducted without being influenced by the observations made by this Court.

6. The learned counsel for the petitioner has also invited my attention to the charge-sheet and he stated that the charge-sheet running into 153 pages. A compilation has been produced wherein the petitioner has to go through the entire documents where the submission has to be made as per the fact and law. He has also invited my attention to Gujarat Civil Services (Conduct) Rules, 1971 particularly Rule 3 where the charges are that when the Government servant fails to maintain absolute integrity, fails to maintain devotion to duty and does anything which is unbecoming of a Government servant. He has further invited my attention to Rule 6 of Gujarat Civil Services (Discipline & Appeal) Rules, 1971 which provides minor and major penalties. The major penalties include even dismissal from service. He therefore submitted that it is no doubt true on the first blush of reading of the charge sheet it appears that only some procedural requirements are to be followed but if one examines whether those requirements are in consonance with particularly the provisions of the Motor Vehicles Act, only there is a lawyer or a person with legal background can properly submit or assist before the authority. The petitioner is a layman who has no legal background, may not be able to submit before the authority. He further submitted that the charge sheet involves very serious allegations of violation of Rule 3 and the ultimate penalty of dismissal or any other major penalty can be imposed. He has submitted that the petitioner has retired on 31.3.2004. Therefore, major penalty of dismissal may not be imposed but the Government may say that the petitioner may be dismissed and as a consequence of that there will be stoppage of retirement benefits to the petitioner. In view of the same, assistance of legal person is necessary.

6. The learned counsel for the petitioner stated that respondent No. 1 ought to have allowed Shri R.B. Dave, a retired Motor Vehicle Prosecutor to defend the case on behalf of the petitioner when the employer was represented by a trained prosecutor. He has relied on the judgement of the Hon'ble Supreme Court in the case of

C.L. SUBRAMANIAM VS. COLLECTOR OF CUSTOMS reported in AIR 1972 SC 2178 where the Hon'ble Apex Court has held that when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. That is why Rule 15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rules by another government servant or in appropriate cases by a legal practitioner. Thereafter, the Hon'ble Supreme Court in para 23 on page 2182 held that by denying to engage legal practitioner, the appellant had not been afforded a reasonable opportunity to defend himself and the order is liable to be struck down. It is further held that no fresh enquiry shall be held against the appellant and he be restored to the position to which he would have been entitled to but for the impugned order.

7. The learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of BOARD OF TRUSTEES, PORT OF BOMBAY VS. DILIPKUMAR reported in AIR 1983 SC 109 particularly para 12 where the Hon'ble Apex Court has held, after referring to the judgement in the case of C.L. SUBRAMANIAM VS. COLLECTOR OF CUSTOMS, COCHIN (supra), that the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. The Hon'ble Supreme Court confirmed the judgement of the learned Single Judge and the Division Bench of the Bombay High Court which has taken the same view in para 12 on pages 112-113.

7A The learned counsel for the petitioner has further relied on the judgement of the Hon'ble Supreme Court in the case of J.K. AGGARWAL VS. HARYANA SEEDS DEVELOPMENT CORPORATION LTD. reported in 1991 SC 1221 particularly para 5 on page 1223 where the Apex Court held that on a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience.

8. Mr. Gori, learned AGP, has relied on the judgement of the Hon'ble Supreme Court in the case of INDIAN OVERSEAS BANK VS. INDIAN OVERSEAS BANK OFFICERS'

ASSOCIATION AND ANOTHER reported in (2001) 9 SCC 540. In that case before the Hon'ble Supreme Court, the facts were as follows:

8A The respective Banks had their own Regulations for regulating the conduct, discipline and appeals pertaining to their officers and employees. Those Regulations contained a provision enabling an officer-employee to take the assistance of any other officer-employee to defend him in any disciplinary proceedings. This was sought to be amended by a circular order providing for the addition of a note to the relevant Regulation in the following terms:

"Note - The officer-employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance".

8B Along with the said amendment the Government has also addressed a letter on similar lines on 5.12.1984.

8C Being aggrieved with the same, some of the petitioners had filed petition before the Karnataka High Court. It appears that the High Court has held that in absence of similar restriction on the managements to employ a presenting officer having more than two pending disciplinary cases on hand the stipulation made by the amendment was discriminatory and violative of Article 14 and that it could not even serve the purpose of avoiding delay in finalisation of the disciplinary proceedings. It further held that in case of shortage of qualified officers in the organisation to defend the charged officer-employees, such a stipulation would deprive them of effective opportunity of defence.

8D. Being aggrieved and dissatisfied with the aforesaid order, the Bank filed appeal before the Hon'ble Supreme Court. In that context, the Hon'ble Supreme Court in paras 6 and 7 of the judgement held that the issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject-matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by

somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation. The Hon'ble Supreme Court after referring to a catena of decisions held that irrespective of the desirability or otherwise of giving the employee facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

8E In that context, the Hon'ble Supreme Court allowed the appeal and held that the amendment which has been suggested after consulting with the Reserve Bank of India appears to be not only genuine and reasonable but the amendment made is also just, proper and necessary in public interest.

9. I have considered the judgements cited by the learned counsel for the petitioner as well as the judgement cited by the learned A.G.P. I have also considered the Law of Writs by Shri V.G. Ramachandran which is revised by Hon'ble Mr. Justice C.K. Thakkar (now the Judge, Supreme Court of India). On page 230 of the said book the learned author has cited that the right of representation by a lawyer is not considered to be a part of natural justice and it cannot be claimed as of right unless the said right is conferred by the statute. The learned author has considered various English decisions and Indian decisions, some of the decisions which I have referred to. On page 236 of the said book the learned author has observed that it becomes clear that a right to legal representation is not a fourth requirement of natural justice. It is a discretionary power with the Tribunal. But like all other discretion, this discretion too, requires to be exercised reasonably and taking into account all the relevant circumstances of the case. The learned author further observed that it cannot be ignored that many a time, a person may not be able to defend himself. No person can be punished without affording reasonable opportunity of putting forward his case. Thus, where the evidence is voluminous or where complicated questions of law are involved or where a man's reputation or livelihood is at stake, he may not be able to defend himself effectively, he may be nervous, confused, tongue-tied, incoherent or wanting in intelligence. In these circumstances, he should not be denied legal assistance. The learned author has relied

on the judgement of Lord Denning in PETT VS. GREYHOUND RACING ASSOCIATION LTD. (1968) 2 All ER 545 (549) and other English decisions. In view of these observations made by the learned author after relying on the judgement of the Hon'ble Supreme Court, Mr. Dave, learned counsel for the petitioner has submitted that in this case there is a voluminous record of 153 pages, some of the aspects may require consideration of provisions of the Motor Vehicles Act, so assistance of a person with legal background is necessary. He has also submitted that if the charges levelled against the petitioner if proved, the major penalty will be dismissal. Therefore, the petitioner's livelihood would be at stake particularly he has submitted that the Inquiry Officer is a person of IAS cadre and the State is represented by a trained prosecutor. In that situation, denial to his right to be represented by a trained public prosecutor who is a practising advocate of this Court is a denial of rule of natural justice.

10. I have considered the judgement of the Hon'ble Supreme Court in the case of INDIAN OVER SEAS BANK VS. INDIAN OVERSEAS BANK OFFICERS' ASSOCIATION AND ANOTHER (supra) cited by the learned A.G.P. In that case the Banks have amended the Regulation by which certain categories of officer-employee may not be allowed to represent the case. In that case the High Court allowed the petition. The Hon'ble Supreme Court reversing the judgement of the High Court, allowed the appeal. Therefore, the judgement cited by the learned A.G.P. is not applicable to the facts of the present case though the said judgement is binding on me as the principles laid down in the said judgement are quite distinguishable. On the contrary, the judgements cited by the learned counsel for the petitioner are applicable to the facts of the present case.

11. I have considered the three judgements of the Hon'ble Supreme Court cited by the learned counsel for the petitioner and also the commentary of the learned author of the book of Law of Writs, Hon'ble Mr. Justice C.K. Thakker. I have also considered the judgement of the Hon'ble Supreme Court cited by learned A.G.P. Mr. Gori. In this case the petitioner ought to have been given assistance of legal practitioner on the ground that the record is voluminous, the Inquiry Officer is a retired IAS officer. The State is going to be represented by a public prosecutor. It is no doubt true that if reading the charge sheet as it is, the charge made raises question of fact but that question will have bearing on the legal provision of the Motor Vehicles Act and therefore if the petitioner has been given assistance

of legal practitioner that will be in the interest of justice. It is no doubt that the petitioner has retired but if the authority comes to a conclusion that a major punishment of dismissal or removal be imposed then that will affect his retirement benefits. In future the order of dismissal will also come in the way of the petitioner. Therefore, the order of the Inquiry Officer will affect the life and livelihood of the petitioner.

12. Legal assistance of a lawyer has been held to be an essential requisite of the procedure established by law by the Supreme Court of India. The Court has held that if a person has not had the legal aid, his deprivation of liberty is unconstitutional and void. (Re: Maneka Gandhi Vs. Union of India, AIR 1978 SC 597; Kadra Pahadiya Vs. State of Bihar, AIR 1981 SC 939; M.H. Hoskot Vs. State of Maharashtra, AIR 1978 SC 1548; Sukdas Vs. Union Territory of Arunachal Pradesh (1986) 2 SCC 401). In my view, therefore, in the aforesaid departmental inquiry, where the allegations in the chargesheet are complicated and the record is voluminous, failure to permit an employee to engage a lawyer did violate the principles of natural justice. In the facts and circumstances of the case, in my view, the petitioner requires professional skills to defend his case and therefore denial of the lawyer's help does amount to the violation of the principles of natural justice.

13. In such situation the request of the petitioner to engage legal practitioner is accepted and the order of the authority rejecting the request of the petitioner to engage a legal practitioner to defend his case is quashed and set aside.

14. In the result, this petition is allowed. The impugned order passed by the authority rejecting the request of the petitioner to engage a legal practitioner to defend his case is quashed and set aside. The Government will allow the petitioner to engage Mr. R.B. Dave, a retired Motor Vehicle Prosecutor who is a practising advocate of this Court to defend the petitioner's case in the departmental inquiry proceedings. Rule is made absolute. No order as to costs.

(K.M. MEHTA, J)

(pkn)